

**Federal Communications Commission
Washington, D.C. 20554**

January 6, 1999

In reply refer to:
1800C1-MLB
98030218

Released: January 7, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTEDKIDS-TV 6, Licensee
Station K06MU(TV)
41506 Big Bear Boulevard, #1
Big Bear Lake, CA 92315

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, for violation of Section 73.1206 of the Commission's rules. This action is taken under authority delegated to the Chief, Mass Media Bureau by Section 0.283 of the Commission's Rules.

On March 13, 1998, the Commission received a complaint from Ken and Nancy Sargent, alleging that on February 26, 1998, low power station K06MU(TV), Big Bear Lake Valley, California, recorded and broadcast a telephone conversation between them and Chuck Foster, the president of KIDS-TV 6, without the Sargents' prior knowledge. The complaint included a videotape of the particular broadcast. Based on this complaint the Commission sent you a letter of inquiry on August 11, 1998. You responded to our inquiry on September 12, 1998. You deny that the station broadcast the telephone conversation without the complainants' prior knowledge. Rather, you indicate that Mr. Sargent "knew or had reason to believe he was being recorded" because he stated during the conversation "... and if you're taping me, fine. That's okay too." You add that it is station policy not to record telephone conversations for subsequent broadcast without the parties' prior knowledge of that fact. You further note that, because Mr. Foster had several prior "run-ins" with the Sargents, he once personally told them, "I want to caution you that I'm going to record your conversations whenever you call or come in to the station, or when you appear at public meetings, and the reason I'm doing this is because I intend to rebut your lies by using your own statements and actions against you on-the-air and in a court of law."

On October 4, 1998, the Sargents submitted comments to your September 12 response. They reiterate that they received no prior notice that the telephone conversation was being recorded for future broadcast. With respect to the licensee's contention that Ken Sargent gave the licensee permission for the taping during the course of the conversation, they state that the comment was an aside to Nancy Sargent, who warned him in the background of the tape that the conversation might be taped. They argue that it was never addressed to Foster, since he never informed them that he was taping the conversation. The Sargents further deny that Foster ever advised them that he would tape his telephone conversations with them in the future, noting that they have never had a face-to-face meeting with him.

Section 73.1206 of the Commission's Rules provides, in pertinent part, that before recording a telephone conversation for broadcast or simultaneously broadcasting a conversation, a licensee shall inform any party to the call of its intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be

broadcast. After reviewing the material before us, including the videotape submitted by the complainants, we conclude that the station recorded the conversation between Foster and the Sargents without the Sargents' knowledge and subsequently broadcast portions of the conversation over the air. While Ken Sargent did state during the conversation with Foster that he did not care if the conversation was being taped, his conversation was already being recorded at the time he made that statement. See, *Liability of Heftel Broadcasting-Contemporary, Inc.*, 52 FCC 2d 1005 (1975), which stands for the proposition that a notice of an intention to broadcast must be given before the taping of a telephone call. Further, the licensee's claim that Foster had given a blanket warning about future taping of conversations did not suffice as prior notice in this case. Such a blanket statement does not amount to notice that a particular conversation would be taped. Moreover, the very language of the warning -- "when you call or come in to the station, or when you appear at public meetings" -- does not include situations where the Sargents are the recipients of the calls, as occurred here.

Based on the evidence before us, it appears that you willfully violated Section 73.1206 of the Commission's Rules on February 26, 1998. The guidelines contained in the Commission's *Forfeiture Policy Statement*, 12 FCC Rcd 17087 (1997), which became effective on October 14, 1997, specify a base forfeiture amount of \$4,000 for the unauthorized broadcast of telephone conversations. Accordingly, pursuant to Section 503 of the Communications Act, KIDS-TV 6, licensee of Station K06MU(TV), Big Bear Lake Valley, California, is hereby advised of its Apparent Liability for Forfeiture in the amount of \$4,000 for an apparent violation of Section 73.1206 of the Commission's Rules.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in attachments to this letter.

Sincerely,



Roy J. Stewart, Chief
Mass Media Bureau

Enclosure

cc: Ken and Nancy Sargent